IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5335 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRUTHVISINH S. RAIJADA

Versus

STATE OF GUJARAT

Appearance:

MR NK PAHWA FOR MR THAKKAR for Petitioner

MR VB GHARANIYA For the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 25/02/2000

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of termination recorded, on 30.1.1987, by the respondent authority, whereby, the services of the petitioner as Police Constable, came to be terminated, by paying salary

of one month, as he was on temporary service, inter alia, contending that it is stigmatic and, therefore, it is violative of the provisions of Article 311(2) of the Constitution of India.

After having heard the learned advocates appearing for the parties and considering the text and tenor of the impugned order, it becomes evident that it is an order of termination of service simpliciter. There is no dispute about the fact that the petitioner joined the service with the respondent, as Police Constable, on 14.3.84, and he was a temporary Police Constable. The main thrust of the petition against the impugned order is that, in reality, the same is stigmatic in the light of the previous notice and the affidavit in reply filed by the respondent authority. Prima facie, this submission appears to be very alluring and attractive, but when one gets into reality, it cannot be said to be sound and sustainable. Needless to reiterate that the impugned order is, 'ipse-dixit' simpliciter which has not cast any stigma. Nexus is sought to be established with alleged stigma with the help of the notice and the subsequent affidavit in reply. In support of this submission, reliance is placed on the decision reported in Anopsin v. H.V.K.Gupta, 1986(2) GLR 753. It is true that notice dated 11.12.86, came to be served on the petitioner indicating and highlighting many instances and incidents during which period, the petitioner by one or other reason remained absent or was absconding. Therefore, the notice was given for termination of service on the ground of misconduct. The reply to the said notice dated 11.12.86 was given by the petitioner, in which, he has pleaded guilty and admitted the lapses ad irregularities and absence of various occasions. He has stated that the lapses occurred on account of family dispute and loss of physical and mental balance and equilibrium. Be that as it may. The respondent authority, while passing the impugned order of termination has not at all referred to any misconduct or irregularity. The impugned order simply states that the services of the petitioner are not required. As he was a temporary servant, his service could be terminated by giving him one months notice or payment of salary in lieu thereof. Therefore, by virtue of the impugned order dated 30.1.87, giving one months's salary, the services of the petitioner were terminated simpliciter with effect, from 31.1.87. Undoubtedly, the text and tenor of the termination order does not even remotely cast any aspersion or stigma on the service career or record of the petitioner. It is true that even in case of a temporary servant or probationer, for that purpose, the services of an employee cannot be terminated

without observing due procedure in the light of the provisions of Article 311(2) of the Constitution of India in case of stigmatic order.

The question which has surfaced for determination and adjudication in this petition is very simple. Could the impugned notice terminating the service be classified or characterised as termination simpliciter or a stigmatized one. Prima facie, on the plain perusal of notice, it could not be said even for a moment that is a stigmatized one, about which there is no dispute. The notice prior to the termination order and the affidavit in reply succeeded after the petition came to be filed could not be taken into consideration for holding that the impugned order would assume the colour of stigma or aspersion. The decision relied on by the learned advocate for the petitioner in the connection (supra) is not helpful to the petitioner in view of the following two decisions of the Hon'ble Apex Court.

1. State of UP & ors. v. Krishna Kumar Sharma, (1997) 11 SCC 437.

2. State of UP & ors vs. Rajendrakumar Singh & anr. (1997) 10 SCC 682.

In the above cases, the Hon'ble Apex Court, clearly propounded that though there may be many lapses, irregularities, misconduct in the past and accordingly adverse remarks are also given, but in a case of a temporary servant, termination of service is made in an order which is simpliciter, could not lead to an inference that the impugned order of termination of service of the petitioner is by way of punishment which requires compliance with the provisions of Article 311(2) of the Constitution of India. It was, also, a case of a constable who was a temporary constable working in the Office of the Superintendent of Police and there were many lapses and irregularities during the period from 1974-79, as highlighted, in para 3 of the said decision. Adverse remarks were, also, communicated to the employee. It was, clearly, mentioned in the service record that conduct of the employee was not quite satisfactory as he was found to have overstayed on leave and number of penalty and punishments were imposed on him. For the year 1979, there were remarks that he is the most indisciplined and undesirable type of constable. These remarks reflected upon his performance in the earlier period. The competent authority came to the conclusion that the performance of the respondent, who was a temporary employee, was not satisfactory and for that

reason, his services had been terminated simpliciter. It was in this connection, it was held that if the order terminating the service is, manifestly, simpliciter, merely because the reference to past misconduct or irregularity had been made in earlier correspondence or service record does not necessarily mean that it was in any way stigmatized or punitive. Though the misconduct or irregularities and the lapses on the part of the employee were highlighted in the affidavit in reply, the same could not be said to be a launching pad to hold that the impugned which is, otherwise, simpliciter would turn to be punitive. Therefore, the order recorded by the High Court holding that the termination was by way of punishment came to be quashed. In the case of Rajendrakumar Singh (supra), almost similar case was in focus. Termination of a temporary constable working in the UP police whether was simpliciter or punitive was the question therein. The authorities had received complaint from his superior that he was keeping company with and demanding money from anti-social elements. On consideration of adverse service record, his service came to be terminated by a non-stigmatic order. The said order was held to be not punitive. Therein, the Hon'ble Apex Court held that in a case of temporary employee, simpliciter order of termination could not be questioned invoking the provisions of Article 311(2) of the Constitution of India.

In the light of the aforesaid facts and proposition of law enunciated, hereinabove, which are no longer in dispute this Court has no hesitation in holding that the impugned order could not be sad to be violative of the provisions of Article 311(2) of the Constitution. This petition is, therefore, meritless and is required to be rejected. Accordingly, it is rejected. Rule discharged with no order as to costs.

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(vjn)